

**FREEMAN**  
**EDWARD**  
**AUGUSTUS**

THE GROWTH OF THE  
ENGLISH CONSTITUTION

Edward Freeman

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English Constitution**

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**Freeman E.**

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# Содержание

CHAPTER I	7
CHAPTER II	28
Конец ознакомительного фрагмента.	30

# Edward A. Freeman

## The Growth of the English Constitution / From the Earliest Times

### PREFACE TO THE FIRST EDITION

The proverb “*qui s’excuse s’accuse*” is so regularly turned against any author who gives any account of the origin of his work that it may be well to prevent its quotation by quoting it oneself. I have to ask that these three Chapters and their accompanying Notes may not be judged by the standard of a book. If I were to write a book on the English Constitution, it would be different in form and, in many points, different in style. What the reader has here is a somewhat extended form of two Lectures given at Leeds and Bradford last January. I had thought that they might be worth printing in the shape of two magazine-papers; others thought that they might do good in their present shape. I therefore expanded the latter part of the second Lecture, which had to be cut very short in delivery, so as to make a third Chapter, and I added such notes and references as seemed to be needed.

I say all this, in order that what I have now written may be judged by the standard of lectures, not by the standard of a book. In a popular lecture it is impossible to deal with everything with which it is desirable to deal; it is impossible to go to the bottom of those things which one picks out to deal with. It is enough – because it is all that can be done – if the choice of subjects is fairly well made, and if the treatment of those that are chosen, though necessarily inadequate, is accurate as far as it goes. Many things must be left out altogether; many things must be treated very imperfectly; the attention of the hearers must be caught by putting some things in a more highly wrought shape than one would choose at another time. The object is gained, if the lecturer awakens in his hearers a real interest in the subject on which he speaks, and if he sends them to the proper sources of more minute knowledge. If I can in this way send every one who wishes to understand the early institutions of his country to the great work of Professor Stubbs – none the less great because it lies in an amazingly small compass – my own work will be effectually done. In Mr. Stubbs’ “Documents Illustrative of English History,” the ordinary student will find all that he can want to learn; while he who means to write a book, or to carry out his studies in a more minute way, will find the best of guidance towards so doing. The great documents of early English history, hitherto scattered far and wide, are now for the first time brought together, and their bearing is expounded in a continuous narrative worthy of the unerring learning and critical power of the first of living scholars.

For my own part, my object has been to show that the earliest institutions of England and of other Teutonic lands are not mere matters of curious speculation, but matters closely connected with our present political being. I wish to show that, in many things, our earliest institutions come more nearly home to us, and that they have more in common with our present political state, than the institutions of intermediate ages which at first sight seem to have much more in common with our own. As the continuity of our national life is to many so hard a lesson to master, so the continuity of our political life, and the way in which we have so often fallen back on the very earliest principles of our race, is a lesson which many find specially hard. But the holders of Liberal principles in modern politics need never shrink from tracing up our political history to its earliest beginnings. As far at least as our race is concerned, freedom is everywhere older than bondage; we may add that toleration is older than intolerance. Our ancient history is the possession of the Liberal, who, as being ever ready to reform, is the true Conservative, not of the self-styled Conservative who, by refusing to reform, does all he can to bring on destruction. One special point on which I have dwelt is the way in which our constitutional history has been perverted at the hands of lawyers. It is perfectly true that the history

of England must be studied in the Statute-Book, but it must be in a Statute-Book which begins at no point later than the Doms of Æthelberht.

As I have often had need to take facts and doctrines for granted which I believe myself to have proved in my larger works, I have in the Notes given frequent references to those works, instead of bringing in the evidence for the same things over again. And in the more modern part of the subject, I have given several extracts at full length, even from very familiar authors, because I know that a reader is often well pleased to have a striking passage set before him at once, without having to seek for it in the original. On the other hand, I have given at full length several extracts from statutes and other documents which most readers are not likely to have at hand. The historical portions of any Act of Parliament can be studied only in the Acts themselves, and not in the summaries of lawyers. Legal writers and speakers seem constantly to repeat what has been said before them, without any reference to the original sources. A memorable example is to be found in the assertion of Blackstone and of a crowd of lawyers after him, in Parliament and out of Parliament, that the King or Queen is by Law Head of the Church. I need hardly say that that title was used by Henry, Edward, and Mary, but that it was given up by Mary, and was not taken up again by any later Sovereign.

Somerleaze, Wells,  
*March 25, 1872.*

### **PREFACE TO THE SECOND EDITION**

In this Second Edition I have made a few verbal corrections and improvements, and I have made two or three additions to the Notes. Otherwise the book is unchanged.

Somerleaze, Wells,  
*October 30, 1872.*

## CHAPTER I

Year by year, on certain spots among the dales and the mountain-sides of Switzerland, the traveller who is daring enough to wander out of beaten tracks and to make his journey at unusual seasons may look on a sight such as no other corner of the earth can any longer set before him. He may there gaze and feel, what none can feel but those who have seen with their own eyes, what none can feel in its fulness more than once in a lifetime, the thrill of looking for the first time face to face on freedom in its purest and most ancient form. He is there in a land where the oldest institutions of our race, institutions which may be traced up to the earliest times of which history or legend gives us any glimmering, still live on in their primæval freshness. He is in a land where an immemorial freedom, a freedom only less eternal than the rocks that guard it, puts to shame the boasted antiquity of kingly dynasties, which, by its side, seem but as innovations of yesterday. There, year by year, on some bright morning of the spring-tide, the Sovereign People, not entrusting its rights to a few of its own number, but discharging them itself in the majesty of its corporate person, meets in the open market-place or in the green meadow at the mountain's foot, to frame the laws to which it yields obedience as its own work, to choose the rulers whom it can afford to greet with reverence as drawing their commission from itself. Such a sight there are but few Englishmen who have seen; to be among those few I reckon among the highest privileges of my life. Let me ask you to follow me in spirit to the very home and birth-place of freedom, to the land where we need not myth and fable to add aught to the fresh and gladdening feeling with which we for the first time tread the soil and drink in the air of the immemorial democracy of Uri<sup>1</sup>. It is one of the opening days of May; it is the morning of Sunday; for men there deem that the better the day the better the deed; they deem that the Creator cannot be more truly honoured than in using, in His fear and in His presence, the highest of the gifts which He has bestowed on man. But deem not that, because the day of Christian worship is chosen for the great yearly assembly of a Christian commonwealth, the more directly sacred duties of the day are forgotten. Before we, in our luxurious island, have lifted ourselves from our beds, the men

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<sup>1</sup> What I say of Uri and the other democratic Cantons must not be misunderstood, as if I all accepted the now exploded dreams which made out the *Waldstädte* or Forest Cantons to have had some special origin, and some special independence, apart from the rest of Germany. The researches of modern scholars have shown, not only that the Forest Cantons were members of the Empire like their neighbours, but that various lesser lords, spiritual and temporal, held different rights within them. Their acquisition of perfect independence, even their deliverance from other lords and promotion to the state of *Reichsunmittelbarkeit* or immediate dependence on the Empire, was a work of time. Thus Uri itself, or part of it, was granted in 853 by Lewis the German to the Abbey of Nuns (*Fraumünster*) in Zürich, and it was not till 1231 that its independence of any lord but the Emperor was formally acknowledged. But the universal supremacy of the Empire in no way interfered with the internal constitution of any district, city, or principality; nor was such interference necessarily implied even in subjection to some intermediate lord. The rule of a female monastery especially would be very light. And from the earliest times we find both the men of Uri in general and the men of particular parts of the district (*Gemeinden*, *Communes*, or parishes) spoken of as communities capable of acting together, and even of treating with those who claimed to be their masters. ("Nos inhabitantes Uroniam" appear in a deed of 955 as capable of making an agreement with the officer of the Abbey at Zürich.) All this is in no way peculiar to the Forest Cantons; it is no more than what we find everywhere; what is peculiar is that, whereas elsewhere the old local communities gradually died out, in the Forest Cantons they lived and flourished, and gained new rights and powers till they grew into absolutely independent commonwealths. I think therefore that I have a right to speak of the democracy of Uri as immemorial. It is not immemorial in its fully developed shape, but that fully developed shape grew step by step out of earlier forms which are strictly immemorial and common to the whole Teutonic race. On the early history of the democratic Cantons, a subject than which none has been more thoroughly misunderstood, I am not able to point to any one trustworthy work in English. Among the writings of Swiss scholars – shut up for the most part from readers of other nations in the inaccessible Transactions of local Societies – there is a vast literature on the subject, of the whole of which I am far from pretending to be master. But I may refer to the *Essai sur l'Etat des Personnes et la Condition des Terres dans le Pays d'Ury au XIII<sup>e</sup> Siècle*, by the Baron Frederick de Gingins-la-Sarraz, in the *Archiv für schweizerische Geschichte*, i. 17; to Dr. J. R. Burckhardt's *Untersuchungen über die erste Bevölkerung des Alpengebirgs* in the same collection, iv. 3; to the early chapters of the great work of Bluntschli, *Geschichte des schweizerischen Bundesrechtes* (Zürich, 1849), and of Blumer's *Staats- und Rechtsgeschichte der schweizerischen Demokratien* (St. Gallen, 1850); to Dr. Alfons Huber, *Die Waldstaette* (Innsbruck, 1861), and Dr. Wilhelm Vischer, *Die Sage von der Befreiung der Waldstädte* (Leipzig, 1867). Dr. H. von Liebenau, in *Die Tell-Sage zu dem Jahre 1230*, takes a line of his own. The results of the whole inquiry will be found in the most accessible form in M. Albert Rilliet's *Les Origines de la Confédération Suisse* (Genève et Bâle, 1868).

of the mountains, Catholic and Protestant alike, have already paid the morning's worship in God's temple. They have heard the mass of the priest or they have listened to the sermon of the pastor, before some of us have awakened to the fact that the morn of the holy day has come. And when I saw men thronging the crowded church, or kneeling, for want of space within, on the bare ground beside the open door, when I saw them marching thence to do the highest duties of men and citizens, I could hardly forbear thinking of the saying of Holy Writ, that "where the Spirit of the Lord is, there is liberty." From the marketplace of Altdorf, the little capital of the Canton, the procession makes its way to the place of meeting at Böblingen. First marches the little army of the Canton, an army whose weapons never can be used save to drive back an invader from their land<sup>2</sup>. Over their heads floats the banner, the bull's head of Uri, the ensign which led men to victory on the fields of Sempach and Morgarten. And before them all, on the shoulders of men clad in a garb of ages past, are borne the famous horns, the spoils of the wild bull of ancient days, the very horns whose blast struck such dread into the fearless heart of Charles of Burgundy<sup>3</sup>. Then, with their lictors before them, come the magistrates of the commonwealth on horseback<sup>4</sup>, the chief magistrate, the Landammann, with his sword by his side. The people follow the chiefs whom they have chosen to the place of meeting, a circle in a green meadow, with a pine forest rising above their heads and a mighty spur of the mountain range facing them on the other side of the valley. The multitude of freemen take their seats around the chief ruler of the commonwealth, whose term of office comes that day to an end. The Assembly opens; a short space is first given to prayer, silent prayer offered up by each man in the temple of God's own rearing. Then comes the business of the day. If changes in the law are demanded, they are then laid before the vote of the Assembly, in which each citizen of full age has an equal vote and an equal right of speech. The yearly magistrates have now discharged all their duties; their term of office is at an end; the trust which has been placed in their hands falls back into the hands of those by whom it was given, into the hands of the sovereign people. The chief of the commonwealth, now such no longer, leaves his seat of office and takes his place as a simple citizen in the ranks of his fellows. It rests with the free will of the Assembly to call him back to his chair of office, or to set another there in his stead. Men who have neither looked into the history of the past, nor yet troubled themselves to learn what happens year by year in their own age, are fond of declaiming against the caprice and ingratitude of the people, and of telling us that under a democratic government neither men nor measures can remain for an hour unchanged. The witness alike of the present and of the past is an answer to baseless theories like these. The spirit which made democratic Athens year by year bestow her highest offices on the patrician Periklês and the reactionary Phôkiôn<sup>5</sup> still lives in the democracies of Switzerland, alike in the Landesgemeinde of Uri and in the Federal Assembly at Bern. The ministers of Kings, whether despotic or constitutional, may vainly envy the sure tenure of office which falls to the lot of those who are chosen to rule by the voice of the people. Alike in the whole Confederation and in the single Canton reelection is the rule; the rejection of the out-going magistrate is the rare exception<sup>6</sup>. The Landammann of Uri, whom his countrymen have raised to

<sup>2</sup> Individual Swiss mercenaries may doubtless still be found in foreign armies, as Italy some years back knew to her cost. But the Federal Constitution of 1848 altogether swept away the system of military capitulations which used to be publicly entered into by the Cantons.

<sup>3</sup> See Johannes von Müller, *Geschichte der schweizerische Eidgenossenschaft*, Book v., c. 1 (vol. xvi. p. 25, of his *sämmtliche Werke*, Stuttgart und Tübingen, 1832, and the note in vol. xxii. p. 14; or the French translation, vol. viii. p. 35: Paris and Geneva, 1840). The description in Peterman Etterlin's *Chronicle*, p. 204 (Basel, 1752), is worth quoting in the original. "Dann do der Hertzog von Burgunn gesach den züg den berg ab züchen, schein die sunn gerad in sy, und glitzet als wie ein spiegel, des gelichen lüyet das horn von Ury, auch die harschorne von Lutzern, und was ein sölich toffen, das des Hertzogen von Burgunn lüt ein grusen darab entpfingent, und trattent hinder sich."

<sup>4</sup> The magistrates rode when I was present at the Landesgemeinden of 1863 and 1864. I trust that so good a custom has not passed away.

<sup>5</sup> On the character and position of Phôkiôn, see Grote, xi. 382, xii. 481; and on the general question of the alleged fickleness of the Athenian people, see iv. 496.

<sup>6</sup> Some years ago I went through all the elections to the *Bundesrath* or Executive Council in Switzerland, and found that in eighteen

the seat of honour, and who has done nothing to lose their confidence, need not fear that when he has gone to the place of meeting in the pomp of office, his place in the march homeward will be transferred to another against his will.

Such is the scene, which, save for a moment, when the world was turned upside down by the inroads of revolutionary France<sup>7</sup>, has gone on year by year as far as history goes back in the most unchanged of European states. Let me ask you to follow me yet again to the place of assembly of a younger member of the same noble band of commonwealths<sup>8</sup>, to pass from Uri to Appenzell, from the green meadows of Bözlingen to the hill-side market-place of Trogen. Somewhat of the pomp and circumstance which marks the assembly of Catholic and pastoral Uri is lacking in the assembly of the Protestant and industrial population of the Outer Rhodes of Appenzell. But the stamp of antiquity, the stamp of immemorial freedom, is impressed alike on the assembly and on the whole life of either commonwealth. We miss in Appenzell the solemn procession, the mounted magistrates, the military pomp, of Uri, but we find in their stead an immemorial custom which breathes perhaps more than any other the spirit of days when freedom was not a thing of course, but a thing for which men had to give their toil and, if need be, their blood. Each man who makes his way to the Landsgemeinde of Trogen bears at his side the sword which the law at once commands him to carry and forbids him to draw<sup>9</sup>. And in the proceedings of the assembly itself, the men of Appenzell have kept one ancient rite, which surpasses all that I have ever seen or heard of in its heart-stirring solemnity. When the newly chosen Landammann enters on his office, his first duty is to bind himself by an oath to obey the laws of the commonwealth over which he is called to rule. His second duty is to administer to the multitude before him the same oath by which he has just bound himself. To hear the voice of thousands of freemen pledging themselves to obey the laws which they themselves have made is a moment in one's life which can never be forgotten, a moment for whose sake it would be worth while to take a far longer and harder journey than that which leads us to Uri or Appenzell.

And now I may be asked why I have begun a discourse on the constitution of England with a picture of the doings of two small commonwealths whose political and social state is so widely different from our own. I answer that I have done so because my object is, not merely to speak of the constitution of England in the shape which the changes of fourteen hundred years have at last given it, but to trace back those successive changes to the earliest times which either history or tradition sets before us. In the institutions of Uri and Appenzell, and in others of the Swiss Cantons which have never departed from the primæval model, we may see the institutions of our own forefathers, the institutions which were once common to the whole Teutonic race, institutions whose outward form has necessarily passed away from greater states, but which contain the germs out of which every free constitution in the world has grown. Let us look back to the earliest picture which history can give us of the political and social being of our own forefathers. In the Germany of Tacitus we have the picture

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years it had only twice happened that a member of the Council seeking reelection had failed to obtain it. I therefore think that I was right in congratulating a member of the Federal Council, whom I had the pleasure of meeting last year, on being a member of the most permanent government in Europe.

<sup>7</sup> Under the so-called Helvetic Republic of 1798, the Cantons ceased to be sovereign States, and became mere divisions, like counties or departments. One of the earliest provisions of this constitution abolishes the ancient democracies of the Forest Cantons. "Die Regierungsform, wenn sie auch sollte verändert werden, soll allezeit eine repräsentative Demokratie sein." (See the text in Bluntschli, ii. 305.) The "repräsentative Demokratie" thus forced on these ancient commonwealths by the sham democrats of Paris was meant to exclude the pure democracy of Athens and Uri. The Federal system was in some sort restored by the Act of Mediation (*Vermittlungsakte*) of Napoleon Buonaparte, when First Consul in 1803. See the text in Bluntschli, ii. 322.

<sup>8</sup> Appenzell, though its history had long been connected with that of the Confederates, was not actually admitted as a Canton till December 1513, being the youngest of the thirteen Cantons which formed the Confederation down to 1798. See Zellweger, *Geschichte des Appenzellischen Volkes*, ii. 366, and the text in his *Urkunden*, ii. part 2, p. 481, or in the older *Appenzeller Chronick* of Walser (Saint Gallen, 1740), 410, and the Act in his *Anhang*, p. 18. The frontispiece of this volume contains a lively picture of a *Landsgemeinde*. In 1597 the Canton was divided into the two Half-cantons of *Ausser-Rhoden*, Protestant, and *Inner-Rhoden*, Catholic. See Zellweger, iii. part 2, p. 160; Walser, 553.

<sup>9</sup> On armed assemblies see Norman Conquest, ii. 331.

of the institutions of the Teutonic race before our branch of that race sailed from the mouths of the Elbe and the Weser to seek new homes by the Humber and the Thames. There, in the picture of our fathers and brethren seventeen hundred years back, the free Teutonic Assembly, the armed Assembly of the whole people, is set before us, well nigh the same, in every essential point, as it may still be seen in Uri, Unterwalden, Glarus, and Appenzell. One point however must be borne in mind. In the assemblies of those small Cantons it is only the most democratic side of the old Teutonic constitution which comes prominently into sight. The commonwealth of Uri, by the peculiar circumstances of its history, grew into an independent and sovereign state. But in its origin it was not a nation, it was not even a tribe<sup>10</sup>. The *Landesgemeinden* of which I have been speaking are the Assemblies, not of a nation but of a district; they answer in our own land, not to the Assemblies of the whole Kingdom, but to the lesser Assemblies of the shire or the hundred. But they are not on that account any the less worthy of our notice, they do not on that account throw any the less light on that common political heritage which belongs alike to Swabia and to England. In every Teutonic land which still keeps any footsteps of its ancient institutions, the local divisions are not simply administrative districts traced out for convenience on the map. In fact, they are not divisions at all; they are not divisions of the Kingdom, but the earlier elements out of whose union the Kingdom grew. Yorkshire, by that name, is younger than England, but Yorkshire, by its elder name of Deira, is older than England<sup>11</sup>. And Yorkshire or Deira itself is younger than the smaller districts of which it is made up, Craven, Cleveland, Holderness, and others. The *Landesgemeinde* of Uri answers, not to an Assembly of all England, not to an Assembly of all Deira, but to an Assembly of Holderness or Cleveland. But in the old Teutonic system the greater aggregate was simply organized after the model of the lesser elements out of whose union it was formed. In fact, for the political unit, for the atom which joined with its fellow atoms to form the political whole, we must go to areas yet smaller than those of Holderness or Uri. That unit, that atom, the true kernel of all our political life, must be looked for in Switzerland in the *Gemeinde* or *Commune*; in England – smile not while I say it – in the parish vestry<sup>12</sup>.

The primitive Teutonic constitution, the constitution of the Germans of Tacitus, the constitution which has lingered on in a few remote corners of the old German realm, is democratic, but it is not purely democratic. Or rather it is democratic, purely democratic, in the truer, older, and more honourable sense of that much maligned word; it is not purely democratic in that less honourable, but purely arbitrary, sense which is often put upon it in modern controversy. Democracy, according to Periklês, is a government of the whole people, as opposed to oligarchy, a government of only a part of the people<sup>13</sup>. A government which vests all power in any one class, a government which shuts

<sup>10</sup> I perhaps need hardly insist on this point after the references given in my first note; but I find it constantly needful to explain that there is no such thing as a Swiss *nation* in any but a political sense. The Cantons were simply members of the Empire which gradually won a greater independence than their fellows. And the Forest Cantons, and the German-speaking Swiss generally, do not even form a distinct part of the German nation; they are simply three settlements of the Alemanni, just as the three divisions of Lincolnshire are three settlements of the Angles.

<sup>11</sup> The earliest instance that I know of the use of the word *Englaland* is in the Treaty with Olaf and Justin in 991. Its earliest use in the English Chronicles is in 1014. See Norman Conquest, i. 78, 276, 605, 629. The oldest use that I know of the name Yorkshire (*Eoforwicscír*) is in the Chronicles under 1065. See Norman Conquest, ii. 478. Deira is, of course, as old as Gregory the Great's pun.

<sup>12</sup> The real history of English parishes has yet to be worked out. I feel sure that they will be found to have much more in common with the continental *Gemeinden* than would seem at first sight. Some hints may be found in a little pamphlet which I lately came across, called "The Parish in History."

<sup>13</sup> The nature of democracy is set forth by Periklês in the Funeral Oration, Thucydides, ii. 37: ὄνομα μὲν διὰ τὸ μὴ ἐς ὀλίγους ἀλλ' ἐς πλείονας οἰκεῖν δημοκρατία κέκληται· μέτεστι δὲ κατὰ μὲν τοὺς νόμους πρὸς τὰ ἴδια διάφορα πᾶσι τὸ ἴσον, κατὰ δὲ τὴν ἀξίωσιν ὡς ἕκαστος ἐν τῷ εὐδοκιμεῖ. It is set forth still more clearly by Athênagoras of Syracuse, vi. 39, where the functions of different classes in a democracy are clearly distinguished: ἐγὼ δὲ φημι πρῶτα μὲν δῆμον ξύμπαν ὀνομάσθαι, ὀλιγαρχίαν δὲ μέρος, ἔπειτα φύλακας μὲν ἀρίστους εἶναι χρημάτων τοὺς πλουσίους, βουλευσάαι δ' ἂν βέλτιστα τοὺς ξυνετοὺς, κρίναι δ' ἂν ἀκούσαντας ἄριστα τοὺς πολλοὺς, καὶ ταῦτα ὁμοίως καὶ κατὰ μέρη καὶ ξύμπαντα ἐν δημοκρατία ἰσομοιρεῖν. Here a distinct sphere is assigned both to wealth and to special intelligence. Nearly the same division is drawn by a writer who might by comparison be called aristocratic. Isokratês (Areop. 29) holds that the management of public affairs should be immediately in the hands of the men of wealth and leisure, who should act as servants of the People, the People itself being their master – or, as he does not scruple to say, *Tyrant* – with full power of reward and punishment: ἐκεῖνοι διεγνωνόκοτες ἦσαν ὅτι δεῖ τὸν μὲν δῆμον

out any one class, whether that class be the highest or the lowest, does not answer the definition of Periklês; it is not a government of the whole but only of a part; it is not a democracy but an oligarchy<sup>14</sup>. Democracy, in the sense of Periklês, demands that every freeman shall have a voice in the affairs of the commonwealth; it does not necessarily demand that every freeman should have an equal voice. It does not forbid the existence of magistrates clothed with high authority and held in high reverence, nor does it forbid respect for ancient birth or even an attachment to an hereditary line of rulers. The older school of English constitutional writers delighted to show that the English Constitution contained a monarchic, an aristocratic, and a democratic element, the three being wrought together in such true and harmonious proportion that we could enjoy the good side of all the three great forms of government without ever seeing the evil side of any of them. These worthy speculators were perhaps a little Utopian in their theories; still there is no doubt that, in every glimpse we get of old Teutonic politics, we see what we may fairly call a monarchic, an aristocratic, and a democratic element. Those earliest glimpses set before us three classes of men as found in every Teutonic society, the noble, the common freeman, and the slave<sup>15</sup>. The existence of the slave, harshly as the name now grates on our ears, is no special shame or blame to our own forefathers. Slavery, in some shape or other, has unhappily been the common law of most nations in most ages; it is a mere exception to the general rule that, partly through the circumstances of most European countries, partly through the growth of humanity and civilization, the hateful institution has, during a few centuries past, gradually disappeared from a certain portion of the earth's surface. And we must not forget that, in many states of society, the doom of slavery may have been thankfully received as an alleviation of his lot by the man whose life was forfeited either as a prisoner in merciless warfare or as a wrong-doer sentenced for his crimes<sup>16</sup>. But I mention the existence of slavery only that we may remember that when we speak of freedom, freeman, democracy, and the like, we are after all speaking of the rights of a privileged class – that, whether in Athens, in Rome, or in the early Teutonic communities, there was always a large mass of human beings who had no share in the freedom, the victory, or the glory of their masters. We are now more closely concerned with those distinctions which, from the earliest times, we find among the freemen themselves. In the Germany of Tacitus, as at this day in the democratic Cantons, the sovereign power is vested in the whole people, acting directly in their own persons. But

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ὡσπερ τύραννον καθιστάναι τὰς ἀρχὰς καὶ κολάζειν τοὺς ἔξαμαρτάνοντας καὶ κρίνειν περὶ τῶν ἀμφισβητουμένων, τοὺς δὲ σχολὴν ἄγειν δυναμένους καὶ βίον ἱκανὸν κεκτημένους ἐπιμελεῖσθαι τῶν κοινῶν ὡσπερ οἰκέτας, καὶ δικαίους μὲν γενομένους ἐπαινεῖσθαι καὶ στέργειν ταύτῃ τῇ τιμῇ, κακῶς δὲ διοικήσαντας μηδεμιᾶς συγγνώμης τυγχάνειν, ἀλλὰ ταῖς μεγίσταις ζημίαις περιπίπτειν. This he elsewhere (Panath 166) calls democracy with a mixture of aristocracy – not oligarchy (τὴν δημοκρατίαν τὴν ἀριστοκρατίᾳ μεμιγμένην). The unfavourable meaning which is often attached to the word democracy, when it does not arise from simple ignorance, probably arises from the use of the word by Aristotle. He makes (Politics, iii. 7) three lawful forms of government, *kingship* (βασιλεία), *aristocracy* (ἀριστοκρατία), and what he calls specially *πολιτεία* or *commonwealth*. Of these he makes three corruptions, *tyranny*, *oligarchy*, and *democracy* (τυραννίς, ὀλιγαρχία, δημοκρατία), defining *democracy* to be a government carried on for the special benefit of the poor (πρὸς τὸ συμφέρον τὸ τῶν ἀπόρων). In this there is something of a philosopher's contempt for all popular government, and it is certain that Aristotle's way of speaking is not that which is usual in the Greek historians. Polybios, like Herodotus and Thucydides, uses the word democracy in the old honourable sense, and he takes (ii. 38) as his special type of democracy the constitution of the Achaean League, which certainly had in it a strong element of practical aristocracy (see History of Federal Government, cap. v.): ἰσηγορίας καὶ παρρησίας καὶ καθόλου δημοκρατίας ἀληθινῆς σύστημα καὶ προαίρεσιν εὐλικρινεστέρων οὐκ ἂν εὗροι τις τῆς παρὰ τοῖς Ἀχαιοῖς ὑπαρχούσης. In short, what Aristotle calls *πολιτεία* Polybios calls *δημοκρατία*; what Aristotle calls *δημοκρατία* Polybios calls *ὀγκοκρατία*.

<sup>14</sup> It follows that, when the commonwealth of Florence disfranchised the whole of the noble families, it lost its right to be called a democracy. See the passing of the Ordinance of Justice in Sismondi, *Républiques Italiennes*, iv. 65; *Chronique di Giovanni Villani*, viii. 1.

<sup>15</sup> On Slavery in England, see Norman Conquest, i. 81, 333, 368, 432, iv. 385. For fuller accounts, see Kemble's *Saxons in England*, i. 185; Zöpfl, *Geschichte der deutschen Rechtsinstitute*, 62. The three classes of nobles, common freemen, and slaves cannot be better set forth than in the Life of Saint Lebuin (Pertz, ii. 361): "Sunt denique ibi, qui illorum lingua edlingi, sunt qui frilingi, sunt qui lassi dicuntur, quod in Latina sonat lingua, nobiles, ingenuiles, atque serviles."

<sup>16</sup> On the *Wite-beow*, the slave reduced to slavery for his crimes, see Kemble, *Saxons in England*, i. 200. He is mentioned several times in the laws of Ine, 24, 48, 54, where, as usual in the West-Saxon laws, a distinction is drawn between the English and the Welsh *wite-beow*. The second reference contains a provision for the case of a newly enslaved *beow* who should be charged with a crime committed before he was condemned to slavery.

if the sovereignty of the popular Assembly is plainly set before us, we have also no less plainly set before us the existence of a Council smaller than the popular Assembly, and also the existence of a class of nobles, the nature and extent of whose privileges is not very well defined, but who clearly had privileges of some kind or other, and whose privileges passed on by hereditary descent. Here we have an aristocratic element as distinctly marked as the democratic element which is supplied by the popular Assembly. And at the head of all we see personal chiefs of tribes and nations, chiefs bearing different titles, Kings, Dukes, or Ealdormen, who in most cases drew their title to rule from an union of birth and election, rulers whom the nation chose and whom the nation could depose, but who still were the personal leaders of the nation, its highest magistrates in peace, its highest leaders in war. Here then, besides the democratic and the aristocratic elements, we have a distinct monarchic element standing out clearly in our earliest glimpses of Teutonic political life. King, Lords, and Commons, in their present shapes, are something comparatively recent, but we may see something which may fairly pass as the germ of King, Lords, and Commons, from the very beginning of our history.

I will even go a step further. The Constitution which I have just sketched is indeed the common possession of the Teutonic race, but it is something more. We should perhaps not be wrong if we were to call it a common possession of the whole Aryan family of mankind. It is possible that we may even find traces of it beyond the bounds of the Aryan family<sup>17</sup>. But I will put speculations like these aside. It is enough for me that the Constitution which was the common heritage of the Teutonic race, was an heritage which the Teuton shared with his kinsfolk in Greece and Italy. Turn to the earliest records of European civilization. In the Homeric poems we see a constitution, essentially the same as that which is set before us in the Germany of Tacitus, established alike in the Achaian camp before Ilios, in the island realm of Ithakê, and even among the Gods on Olympos. Zeus is the King of all; but he has around him his Council of the greater Gods, and there are times when he summons to his court the whole Assembly of the Divine nation, when Gods of all ranks gather together in the court of their chief, when, save old Ocean himself, even all the River-gods were there, and when we are specially told – a fact which might perhaps be pressed into the service of very recent controversies – that not one of the Nymphs stayed away<sup>18</sup>. If we come down to earth, we find the King of Men as the common leader of all, but we find him surrounded by his inner Council of lesser princes and captains. And on great occasions, Agamemnôn on earth, like Zeus in heaven, gathers together the general Assembly of freeborn warriors, an assembly in which, if debate was mainly confined to a few eloquent leaders, the common freeman, the undistinguished citizen and soldier, had at least the right of speaking his mind as to the proposals of his chiefs, by loud applause or by emphatic silence<sup>19</sup>. Nor is this picture confined to the host in battle array beneath the walls of Ilios; we must remember that in all early societies the distinction between soldier and civilian is unknown; the army is the nation, and the nation is the army. The same picture which the Iliad sets before us as the constitution of the Achaian army is set before us in the glimpses of more peaceful life which we find in the Odyssey as being no less the constitution of every Hellenic commonwealth on its own soil. Everywhere we find the same three elements, the supreme leader or King, the lesser chiefs who form his Council, and the final authority of all, the general Assembly of the freemen<sup>20</sup>. We see the same in every glimpse which

<sup>17</sup> I wish to leave the details of Eastern matters to Eastern scholars. But there are several places in the Old Testament where we see something very much like a general assembly, combined with distinctions of rank among its members, and with the supremacy of a single chief over all.

<sup>18</sup> Iliad, xx. 4. Ζεὺς δὲ Θέμιστα κέλευσε θεοὺς ἀγορήνδε καλέσσαι Κρατὸς ἅπ' Οὐλύμπω πολυπτύχου· ἢ δ' ἄρα πάντη Φοιτήσασα κέλευσε Διὸς πρὸς δῶμα νέεσθαι. Οὔτε τις οὖν Ποταμιῶν ἀπέτην, νόσφ' Ὀκεανοῖο, οὔτ' ἄρα Νυμφῶν ταί τ' ἄλσεα καλὰ νέμονται. Καὶ πηγὰς ποταμιῶν, καὶ πῖσα ποιήεντα. Besides the presence of the Nymphs in the divine *Mycel Gemôt*, something might also be said about the important position of Hêrê, Athênê, and other female members of the inner council. We find the mortal Assembly described at length in the second book of the Iliad, and indeed by implication at the very beginning of the first book.

<sup>19</sup> We hear the applause of the assembly in i. 23 and ii. 333, and in the Trojan Assembly, xviii. 313.

<sup>20</sup> On the whole nature of the Homeric ἀγορή see Gladstone's *Homer and the Homeric Age*, iii. 14. Mr. Gladstone has to my thinking understood the spirit of the old Greek polity much better than Mr. Grote.

history or legend gives us of the political state of Rome and the other old Italian commonwealths<sup>21</sup>. Everywhere we find the King, the Senate, the Assembly of the people, and the distribution of powers is not essentially changed when the highest personal authority is transferred from the hands of a King chosen for life to the hands of Consuls chosen for a year<sup>22</sup>. The likeness between the earliest political institutions of the Greek, the Italian, and the Teuton is so close, so striking in every detail, that we can hardly fail to see in it possession handed on from the earliest times, a possession which Greek, Italian, and Teuton already had in the days before the separation, in those unrecorded but still authentic times when Greek, Italian, and Teuton were still a single people speaking a single tongue.

I have referred more than once to the picture of our race in its earliest recorded times, as set before us by the greatest of Roman historians in the Germany of Tacitus. Let me now set before you some special points of his description in his own words as well as I am able to clothe them in an English dress<sup>23</sup>.

“They choose their Kings on account of their nobility, their leaders on account of their valour. Nor have the Kings an unbounded or arbitrary power, and the leaders rule rather by their example than by the right of command; if they are ready, if they are foreward, if they are foremost in leading the van, they hold the first place in honour... On smaller matters the chiefs debate, on greater matters all men; but so that those things whose final decision rests with the whole people are first handled by the chiefs... The multitude sits armed in such order as it thinks good; silence is proclaimed by the priests, who have also the right of enforcing it. Presently the King or chief, according to the age of each, according to his birth, according to his glory in war or his eloquence, is listened to, speaking rather by the influence of persuasion than by the power of commanding. If their opinions give offence, they are thrust aside with a shout; if they are approved, the hearers clash their spears. It is held to be the most honourable kind of applause to use their weapons to signify approval. It is lawful also in the assembly to bring matters for trial and to bring charges of capital crimes... In the same assembly chiefs are chosen to administer justice through the districts and villages. Each chief in so doing has a hundred companions of the commons assigned to him, as at once his counsellors and his authority. Moreover they do no matter of business, public or private, except in arms.”

Here we have a picture of a free commonwealth of warriors, in which each freeman has his place in the state, where the vote of the general Assembly is the final authority on all matters, but where both hereditary descent and elective office are held in high honour. We see also in a marked way the influence of personal character and of the power of speech; we see the existence of local divisions, local assemblies, local magistrates; in a word, we see in this picture of our forefathers in their old land, seventeen hundred years ago, the germs of all the institutions which have grown up step by step among ourselves in the course of ages. And a Swiss of the democratic Cantons would see in it, not merely the germs of his constitution, but the living picture of the thing itself.

<sup>21</sup> There is no need to go into any speculations as to the early Roman Constitution, as to the origin of the distinction of *patres* and *plebs*, or any of the other points about which controversies have raged among scholars. The three elements stand out in every version, legendary and historical. In Livy, i. 8, Romulus first holds his general Assembly and then chooses his Senate. And in c. 26 we get the distinct appeal from the King, or rather from the magistrates acting by his authority, to an Assembly which, whatever might be its constitution, is more popular than the Senate.

<sup>22</sup> It is hardly needful to show how the Roman Consuls simply stepped into the place of the Kings. It is possible, as some have thought, that the revolution threw more power into patrician hands than before, but at all events the Senate and the Assembly go on just as before.

<sup>23</sup> Tacitus, de Moribus Germaniæ, c. 7-13: “Reges ex nobilitate; Duces ex virtute sumunt. Nec Regibus infinita aut libera potestas; et Duces exemplo potius quam imperio: si prompti, si conspicui, si ante aciem agant, admiratione præsumunt... De minoribus rebus Principes consultant; de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium est apud Principes pertractentur... Ut turbæ placuit, considunt armati. Silentium per Sacerdotes, quibus tum et coercendi jus est, imperatur. Mox Rex, vel Princeps, prout ætas cuique, prout nobilitas, prout decus bellorum, prout facundia est audiuntur, auctoritate suadendi magis quam jubendi potestate. Si displicuit sententia, fremitu adspernantur; sin placuit, frameas concutunt. Honoratissimum adsensûs genus est, armis laudare. Licet apud concilium adcusare quoque et discrimen capitis intendere... Eliguntur in iisdem conciliis et Principes, qui jura per pagos vicosque reddant. Centeni singulis ex plebe comites, consilium simul et auctoritas, adsunt. Nihil autem neque publicæ neque privatæ rei nisi armati agunt.” For a commentary, see Zöpfl, *Geschichte der deutschen Rechtsinstitute*, p. 94. See also Allen, *Royal Prerogative*, 12, 162.

This immemorial Teutonic constitution was thus the constitution of our forefathers in their old land of Northern Germany, before they made their way into the Isle of Britain. And that constitution, in all its essential points, they brought with them into their new homes, and there, transplanted to a new soil, it grew and flourished, and brought forth fruit richer and more lasting than it brought forth in the land of its earlier birth. On the Teutonic mainland, the old Teutonic freedom, with its free assemblies, national and local, gradually died out before the encroachments of a brood of petty princes<sup>24</sup>. In the Teutonic island it has changed its form from age to age; it has lived through many storms and it has withstood the attacks of many enemies, but it has never utterly died out. The continued national life of the people, notwithstanding foreign conquests and internal revolutions, has remained unbroken for fourteen hundred years. At no moment has the tie between the present and the past been wholly rent asunder; at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory. Each step in our growth has been the natural consequence of some earlier step; each change in our law and constitution has been, not the bringing in of anything wholly new, but the development and improvement of something that was already old. Our progress has in some ages been faster, in others slower; at some moments we have seemed to stand still, or even to go back; but the great march of political development has never wholly stopped; it has never been permanently checked since the day when the coming of the Teutonic conquerors first began to change Britain into England. New and foreign elements have from time to time thrust themselves into our law; but the same spirit which could develop and improve whatever was old and native has commonly found means sooner or later to cast forth again whatever was new and foreign. The lover of freedom, the lover of progress, the man who has eyes keen enough to discover real identity under a garb of outward unlikeness, need never shrink from tracing up the political institutions of England to their earliest shape. The fourteen hundred years of English history are the possession of those who would ever advance, not the possession of those who would stand still or go backwards. The wisdom of our forefathers was ever shown, not in a dull and senseless clinging to things as they were at any given moment, but in that spirit, the spirit alike of the true reformer and the true conservative, which keeps the whole fabric standing, by repairing and improving from time to time whatever parts of it stand in need of repair or improvement. Let ancient customs prevail<sup>25</sup>; let us ever stand fast in the old paths. But the old paths have in England ever been the paths of progress; the ancient custom has ever been to shrink from mere change for the sake of change, but fearlessly to change whenever change was really needed. And many of the best changes of later times, many of the most wholesome improvements in our Law and Constitution, have been only the casting aside of innovations which have crept in in modern and evil times. They have been the calling up again, in an altered garb, of principles as old as the days when we get our first sight of our forefathers in their German forests. Changed as it is in all outward form and circumstance, the England in which we live, has, in its true life and spirit, far more in common with the England of the earliest times than it has with the England of days far nearer to our own. In many a wholesome act of modern legislation, we have gone back, wittingly or unwittingly, to the earliest principles of our race. We have advanced by falling back on a more ancient state of things; we have reformed by calling to life again the institutions of earlier and ruder times, by setting ourselves free from the slavish subtleties of Norman lawyers, by casting aside as an accursed thing the innovations of Tudor tyranny and Stewart usurpation.

I have said that the primæval Teutonic constitution was brought with them by our Teutonic forefathers when they came as conquerors into the Isle of Britain. I will not again go into the details of the English Conquest, the settlement which gave us a new home in a new land, nor into all the questions and controversies to which the details of the English Conquest have given rise. I have spoken

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<sup>24</sup> See Norman Conquest, i. 95. The primitive Constitution lasted longest at the other end of the Empire, in Friesland. See Eichhorn, *Deutsche Staats-und Rechtsgeschichte*, ii. 265, iii. 158. Zöpfl, *Geschichte der deutschen Rechtsquellen*, p. 154.

<sup>25</sup> Τὰ ἀρχαῖα ἤθη κρατεῖτω is an ecclesiastical maxim; rightly understood, it is just as true in politics.

of them over and over again with my voice and with my pen, and I hope I may now take for granted what I have fully argued out elsewhere<sup>26</sup>. I hope that I may be allowed to assume the plain facts of the case, without going through the details of every point. I will assume then – for it is that to which the question really comes – that England is England and that Englishmen are Englishmen. I will assume that we are not Romans or Welshmen, but that we are the descendants of the Angles, Saxons, and Jutes who came hither in the fifth and sixth centuries, of the Danes and Northmen who came hither in the ninth. I will assume that we are a people, not indeed of unmixed Teutonic blood – for no people in the world is of absolutely unmixed blood – but a people whose blood is not more mixed than that of any other nation; that Englishmen are as truly Englishmen as Britons are Britons or as High-Germans are High-Germans. I will assume that what is Teutonic in us is not merely one element among others, but that it is the very life and essence of our national being; that whatever else we may have in us, whatever we have drawn from those whom we conquered or from those who conquered us, is no coordinate element, but a mere infusion into our Teutonic essence; in a word I will assume that Englishmen are Englishmen, that we are ourselves and not some other people. I assume all this; if any man disputes it, if any man chooses not to be an Englishman but to be a Welshman or a Roman, I cannot argue with him now; I can only ask him to turn to the arguments which I have urged on all those points in other times and places. I assume that, as we have had one national name, one national speech, from the beginning, we may be fairly held to have an unbroken national being. And when we find a Teutonic-speaking people in Britain living under the same political and social forms as the Teutonic-speaking people of the mainland, it is surely no very rash or far-fetched inference that the tongue and the laws which they have in common are a common possession drawn from a common source; that the island colony in short came itself, and brought its laws and language with it, from the elder mother-land beyond the sea.

Our fathers then came into Britain, and they brought with them the same primæval political system, the same distinctions of rank, the same division of political power, which they had been used to in their elder Anglian and Saxon homes. The circumstances of the Conquest would no doubt bring about some changes. It would probably tend to increase the numbers of the class of slaves. Such of the natives as were neither slain nor driven out would of course pass into that class. Especially, though there is no doubt that our forefathers brought their women with them from their own homes, there is no doubt that many British women passed into bondage, so much so that one of the common Old-English names for a female slave is *Wylne* or *Welshwoman*<sup>27</sup>. And we may infer that this increased familiarity with slavery would tend to strengthen the custom by which freemen guilty of crimes were reduced to slavery by sentence of law. Again, I suspect that the circumstances of the Conquest did something to raise the position both of the common freeman and of the King or leader, as compared with the intermediate class of nobles. No two things are more levelling than colonization and successful warfare. The levelling effect of colonization is obvious; the levelling effect of warfare is not so obvious in modern times. In modern armies, where there is a strictly defined system of military ranks, where the distinction of officer and private is broadly drawn, where the private soldier is little more than a machine in the hands of his commander, the effect may even be the other way. But in an earlier state of things, where victory depends on the individual prowess of each man, nothing can be more levelling than warfare. Honour and profit fall to the lot of the stoutest heart and the strongest arm, whether their owner be noble or peasant in his own land. And this would be still more the case when war and colonization went hand in hand, when success brought not only victory but conquest, when men fought, not to go back loaded with glory and plunder to their old homes, but to win for themselves new homes as the reward of their valour. On the other hand, in an early state of things personal

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<sup>26</sup> See my papers on “the Origin of the English Nation” and “the Alleged Permanence of Roman Civilization in England” in Macmillan’s Magazine, 1870.

<sup>27</sup> See Schmid, *Gesetze der Angel-Sachsen*, on the words “*wealh*” and “*wylne*.” Earle, *Philology of the English Tongue*, 318. On the fact that the English settlers brought their women with them, see *Historical Essays*, p. 36.

influence is almost everything; a vigorous and popular ruler is practically absolute, because no one has the wish to withstand his will, but a weak or unpopular ruler can exercise no authority whatever. In such a state of things as this no one can so easily gain the authority of unbounded influence as the military chief who leads his tribe to victory. And again, that influence would be increased tenfold when the successful chief led them not only to victory but to conquest, when he was not only a ruler but a founder, the man who had led his people to win for themselves a new land, to create a new state, the prize of his sword and of theirs. Mere nobility of birth, however highly honoured, would be but a feeble influence compared with either of these influences above and below it. I think that we may trace something of the results of these influences in the position of the oldest English nobility. That there was a difference between the noble and the common freeman, in Old-English phrase between the *Eorl* and the *Ceorl*<sup>28</sup>, is shown by countless allusions to the distinction in our earliest records. But it is by no means easy to say what the distinction really was. And, as we shall presently see that this primitive nobility gradually gave way to a nobility of quite another kind and founded on quite another principle, we may perhaps be inclined to think that, at least after the settlement of the English in Britain, the privileges of the *Eorlas* were little more than honorary. I need hardly say that a traditional deference for high birth, a traditional preference for men of certain families in the disposal of elective offices, may go on when birth carries with it no legal privilege whatever. Nowhere has this been more strikingly shown than in those democratic Cantons of Switzerland of which I have already spoken. In a commonwealth where magistrates were chosen yearly, where every freeman had an equal vote in their choice, it still happened that, year after year, the representatives of certain famous houses were chosen as if by hereditary right. Such were the Barons of Attinghausen in Uri and the house of Tschudi in Glarus<sup>29</sup>. And, whatever we say of such a custom in other ways, it was surely well suited to have a good effect on the members of these particular families; it was well suited to raise up in them a succession of men fitted to hold the high offices of the commonwealth. A man who knows that, if he be at all worthy of a certain post of honour, he will be chosen to it before any other man, but who also knows that, if he shows himself unworthy of it, he may either fail to attain it at all or may be peacefully removed from it at the end of any twelvemonth, is surely under stronger motives to make himself worthy of the place which he hopes to fill than either the man who has to run the chance of an unlimited competition or the man who succeeds to honour and authority by the mere right of his birth.

Our fathers then came into Britain, bringing with them the three elements of the primitive constitution which we find described by Tacitus; but as I am inclined to think, the circumstances of the Conquest did something, for a while at least, to strengthen the powers both of the supreme chief and of the general body of the people at the expense of the intermediate class of *Eorlas* or nobles. Let us first trace the origin and growth of the power of the supreme leader, in other words, the monarchic element, the kingly power. What then is a King? The question is much more easily asked than answered. The name of King has meant very different things in different times and places; the amount of authority attached to the title has varied greatly in different times and places. Still a kind of common idea seems to run through all its different uses; if we cannot always define a King, we at least commonly know a King when we see him. The King has, in popular sentiment at least, a vague greatness and sanctity attaching to him which does not attach to any mere magistrate, however high in rank and authority. I am not talking of the reason of the thing, but of what, as a matter of fact, has at all times been the popular feeling. Among the heathen Swedes, it is said that, when public affairs went wrong, – that is, in the state of things when we should now turn a Minister out of office and when our forefathers some generations back would have cut off his head, – they

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<sup>28</sup> On *Eorlas* and *Ceorlas* I have said something in the History of the Norman Conquest, i. 80. See the two words in Schmid, and the references there given.

<sup>29</sup> On the Barons of Attinghausen, see Blumer, *Staats- und Rechtsgeschichte der schweizerischen Demokratien*, i. 122, 214, 272.

despised any such secondary victims, and offered the King himself in sacrifice to the Gods<sup>30</sup>. Such a practice certainly implies that our Scandinavian kinsfolk had not reached that constitutional subtlety according to which the responsibility of all the acts of the Sovereign is transferred to some one else. They clearly did not, like modern constitution-makers, look on the person of the King as inviolable and sacred. But I suspect that the very practice which shows that they did not look on him as inviolable shows that they did look on him as sacred. Surely the reason why the King was sacrificed rather than any one else was because there was something about him which there was not about any one else, because no meaner victim would have been equally acceptable to the Gods. On the other hand – to stray for a moment beyond the range of Teutonic and even of Aryan precedent – we read that the ancient Egyptians forestalled the great device of constitutional monarchy, that their priests, in a yearly discourse, dutifully attributed all the good that was done in the land to the King personally and all the evil to his bad counsellors<sup>31</sup>. These may seem two exactly opposite ways of treating a King; but the practice of sacrificing the King, and the practice of treating the King as one who can do no wrong, both start from the same principle, the principle that the King is, somehow or other, inherently different from everybody else. Our own Old-English Kings, like all other Teutonic Kings, were anything but absolute rulers; the nation chose them and the nation could depose them; they could do no important act in peace or war without the national assent; yet still the King, as the King, was felt to hold a rank differing in kind from the rank held by the highest of his subjects. Perhaps the distinction mainly consisted in a certain religious sentiment which attached to the person of the King, and did not attach to the person of any inferior chief. In heathen times, the Kings traced up their descent to the Gods whom the nation worshipped; in Christian times, they were distinguished from lesser rulers by being admitted to their office with ecclesiastical ceremonies; the chosen of the people became also the Anointed of the Lord. The distinction between Kings and rulers of any other kind is strictly immemorial; it is as old as anything that we know of the political institutions of our race. The distinction is clearly marked in the description which I read to you from Tacitus. He distinguishes in a marked way *Reges* and *Duces*, Kings and Leaders; Kings whose claim to rule rested on their birth, and leaders whose claim to rule rested on their personal merit. But from the same writer we learn that, though the distinction was so early established and so well understood, it still was not universal among all the branches of the Teutonic race. Of the German nations described by Tacitus, some, he expressly tells us, were governed by Kings, while others were not<sup>32</sup>. That is to say, each tribe or district had its own chief, its magistrate in peace and its leader in war, but the whole nation was not united under any one chief who had any claim to the special and mysterious privileges of kingship. That is to say, though we hear of kingship as far back as our accounts will carry us, yet kingship was not the oldest form of government among the Teutonic tribes. The King and his Kingdom came into being by the union of several distinct tribes or districts, which already existed under distinct leaders of their own, and in our own early history we can mark with great clearness the date and circumstances of the introduction of kingship. We should be well pleased to know what were the exact Teutonic words which Tacitus expressed by the Latin equivalents *Rex* and *Dux*. As for the latter at least, we can make a fair guess. The Teutonic chief who was not a King bore the title of *Ealdorman* in peace and of *Heretoga* in war. The former title needs no explanation. It still lives on among us, though with somewhat less than its ancient dignity. The other title of *Heretoga*, army-leader, exactly answering to

<sup>30</sup> I cannot at this moment lay my hand on my authority for this curious, and probably mythical, custom, but it is equally good as an illustration any way.

<sup>31</sup> This custom is described by Diodōros, i. 70. The priest first recounted the good deeds of the King and attributed to him all possible virtues; then he invoked a curse for whatever has been done wrongfully, absolving the King from all blame and praying that the vengeance might fall on his ministers who had suggested evil things (τὸ τελευταῖον ὑπὲρ τῶν ἀγνοουμένων ἀρὰν ἐποιεῖτο, τὸν μὲν βασιλέα τῶν ἐγκλημάτων ἐξαιρούμενος, εἰς δὲ τοὺς ὑπηρετοῦντας καὶ διδάξαντας τὰ φαῦλα καὶ τὴν βλαβὴν καὶ τὴν τιμωρίαν ἀξιῶν ἀποσκήψαι). He wound up with some moral and religious advice.

<sup>32</sup> Tacitus (Germ. 25) distinguishes “*æ gentes quæ regnantur*” from others. And in 43 he speaks of “*erga Reges obsequium*” as characteristic of some particular tribes: see Norman Conquest, i. 579.

the Latin *Dux*, has dropped out of our own language, but it survives in High-German under the form of *Herzog*, which is familiarly and correctly translated by *Duke*<sup>33</sup>. The *Duces* of Tacitus, there can be no doubt, were *Ealdormen* or *Heretogan*. It is less clear what the title was which he intended by *Rex*. Our word *Cyning*, *King*, is common to all the existing Teutonic tongues, and we find it as far back as we can trace the English language<sup>34</sup>. But it is not the only, nor seemingly the oldest, word to express the idea. In the oldest monument of Teutonic speech, the Gothic translation of the Scriptures, the word *King*, in any of its forms, is not found. The word there used is *Thiudans*<sup>35</sup>. And there is a third word *Drihten*, which in English is most commonly used in a religious sense<sup>36</sup>. I would ask you to bear with me while I plunge for a moment into some obsolete Teutonic etymologies, as I think that the analogies of these three words are not a little interesting. All three names come from, or are closely connected with, words meaning the race or people. One of those words, *Cyn* or *Kin*, we still keep in modern English with no change of sound and with very little change of meaning. Now, the word *Cyning*, in its shortened form *King*, either comes straight from the substantive *Cyn*, or else from a closely connected adjective *Cyne*, noble, just like the Latin *generosus* from *Genus*, which, let me add, is the same word as our English *Cyn*. Let no one delude you into thinking that *King* has anything to do with the *canning* or *cunning* man. The man who first said that it had had simply not learned his Old-English grammar<sup>37</sup>. It has to do with *Cyn* and *Cyne*, and it may be taken as “the noble one,” or, as *ing* is the Teutonic patronymic, any one that chooses may thus form *Cyning* from *Cyn*, and make the *King*, not the father of his people, but their offspring<sup>38</sup>. Now the other two names, *Thiudans* or *Theoden*, and *Drihten*, have dropped out of our language, and so have the two words with which they are connected, just as *Cyning* is connected with *Cyn*. *Thiudans* or *Theoden* comes from *Thiuda* or *Theod*, also meaning *people*, a word which you will recognize in many of the old Teutonic names, *Theodric*, *Theodberht*, *Theodbald*, and the like. So *Drihten* either comes straight from *Driht*, a family or company, or else, just like *Cyn* and *Cyne*, from an adjective *driht* meaning noble or lordly. All these three names expressing kingship have thus to do with words meaning the race or people. They imply the chief of a people, something more than the chief of a mere tribe or district. Now in our Old-English Chronicles, when they tell how the first English Conquerors, Hengest and Horsa, settled in Kent, they do not call them *Cyningas* but *Heretogan*, Leaders or Dukes. It is not till after some victories over the Britons that we hear that Hengest took the *rice* or kingdom, and that his son Æsc is called *King*. So in Wessex, the first conquerors Cerdic and Cynric are called *Ealdormen* when they land; but, when they have established a settled dominion at the expense of the Welsh, we read that they too took the *rice*, and the leaders of the West-Saxons are henceforth spoken of as Kings<sup>39</sup>. It is plain then that the first leaders of the English settlements in Britain, when they came over, bore only the lowlier title of *Heretoga* or *Ealdorman*; it was only when they had fought battles and found themselves at the head of a powerful and victorious settlement on the conquered soil that they were thought worthy of the higher title of Kings. And we may further believe that, with all their exploits

<sup>33</sup> On the use of the words *Ealdorman* and *Heretoga*, see Norman Conquest, i. 581, and the references there given.

<sup>34</sup> See Norman Conquest, i. 583, and the passages in Kemble and Allen there referred to.

<sup>35</sup> See Kemble's Saxons in England, i. 152, and Massmann's Ulfilas, 744.

<sup>36</sup> See the words *driht*, *drihten* in Bosworth's Anglo-Saxon Dictionary.

<sup>37</sup> To say nothing of other objections to this derivation, its author must have fancied that *ing* and not *end* was the ending of the Old-English participle. The mistake is as old as Sir Thomas Smith. See his Commonwealth of England, p. 12.

<sup>38</sup> See Norman Conquest, i. 583, and the passages there quoted. I am afraid of meddling with Sanscrit, but it strikes me that the views of Allen and Kemble are not inconsistent with a connexion with the Sanscrit *Ganaka*. As one of the curiosities of etymology, it is worth noticing that Mr. Wedgwood makes the word “probably identical with Tartar *chan*.”

<sup>39</sup> We read in the Chronicles, 449, how, on the first Jutish landing in Kent, “heora *heretogan* wæron twegen gebroðra Hengest and Horsa.” It is only in 455, on the death of Horsa, that “æfter Pam Hengest feng to *rice* and Æsc his sunu”; and in 488, seemingly on the death of Hengest, “Æsc feng to *rice* and was xxiiii wintra Cantwara *cyning*.” So among the West-Saxons, in 495, “coman twegen *ealdormen* on Brytene, Cerdic and Cynric his sunu.” It is only in 519 that we read “her Cerdic and Cynric West-Sexena *rice* onfengun.”

they would not have been thought worthy of it, if they had not been held to come of the blood of the Gods, of the divine stock of Woden.

We thus see that kingship in the strict sense of the word, as distinguished from the government of Dukes or Ealdormen, had its beginning among the English in Britain, not in the very first moment of the Conquest, but in the years which immediately followed it, within the lifetime of the first generation of conquerors. The same distinction which we find among the Angles and Saxons we find also among the kindred nations of Scandinavia. When the Danes and Northmen began those invasions which led to such important settlements in Northern and Eastern England, we always find two marked classes of leaders, the Kings and the *Jarls*, the same word as *Eorl*. Of these the *Jarls* answer to the English *Ealdormen*<sup>40</sup>. The distinction is again clearly marked, when we read that the Old-Saxons, the Saxons of the mainland, were ruled, not by Kings, but by what our Latin writer is pleased to call *Satrapas*— that is, of course, *Dukes* or *Ealdormen*<sup>41</sup>. But it is most strongly marked of all in several accounts where we read of nations which had been united under Kings falling back again upon the earlier dominion of these smaller local chiefs. Thus the Lombards in Italy, who had been led by Kings to their great conquest, are said for a while to have given up kingly government, and to have again set up a rule of independent Dukes. So the West-Saxons in our own island are said at one time to have cast away kingly government, and to have in the like sort fallen back on the rule of independent *Ealdormen*<sup>42</sup>. In all these cases, we should be glad to know more clearly than we do what was the exact distinction between the *King* and the *Duke* or *Ealdorman*. But it is plain that the King was the representative of a closer national unity, while the Ealdorman represented the tendency on the part of each tribe or district to claim independence for itself. The government of the Ealdorman may not have been less effective than that of the King. If we remember the distinction drawn by Tacitus as to the respective qualifications for the two offices, we may even believe that the rule of the Ealdorman may have been the more effective. But we may be sure that the Ealdorman was felt to be, in some way or other, less distant from the mass of his people than the King was; the place of King could be held only by one of the stock of Woden; the place of Ealdorman, it would seem, was open to any man who showed that he possessed the gifts which were needed in a leader of men.

Kingship thus became the law of all the Teutonic tribes which settled in Britain and whose union made up the English nation. That union, we must always remember, was very gradual. Step by step, smaller Kings or independent Ealdormen admitted the supremacy of a more powerful King. Then, in a second stage, the smaller state was absolutely incorporated with the greater. Its ruler now, if he continued to rule at all, ruled no longer as an independent or even as a vassal sovereign, but as a mere magistrate, acting by the deputed authority of the sovereign of whom he held his office<sup>43</sup>. The

<sup>40</sup> The distinction between Kings and Jarls comes out very strongly in the account of the battle of Ashdown (*Æscesdune*) in the *Chronicles* in 871. The Danes “wæron on twam gefylcum, on oþrum wæs Bagsecg and Healfdene, þa hæðenan *cingas* and on oðrum wæron þa *eorlas*.” It may be marked that in the English army King *Æthelred* is set against the Danish Kings, and his brother the *Ætheling* *Ælfred* against the Jarls. So in the *Song of Brunanburh* we read of the five Kings and seven Jarls who were slain. We may mark that the Kings were young, as if they had been chosen “*ex nobilitate*;” nothing is said of the age of the Jarls, who were doubtless chosen “*ex virtute*.”

<sup>41</sup> I have quoted the passage from *Bæda* about the satraps in *Norman Conquest*, i. 579. The passage in the *Life of Saint Lebuin*, quoted in note 15, also speaks of “*principes*” as presiding over the several *pagi* or *gauen*, but he speaks of no King or other common chief over the whole country. And this is the more to be marked, as there was a “*generale concilium*” of the whole Old-Saxon nation, formed, as we are told, of twelve chosen men from each *gau*. This looks like an early instance of representation, but it should be remembered that we are here dealing with a constitution strictly Federal. In the like sort we find the rulers of the West-Goths at the time of their crossing the Danube spoken of as *Judices*. See *Ammianus*, xxvii. 5, and the notes of *Lindenbrog* and *Valesius*. So also *Gibbon*, c. xxv. (iv. 305, ed. *Milman*). So *Jornandes*(26) speaks of “*primates eorum, et duces, qui regum vice illis præerant*.” Presently he calls *Fredigern* “*Gothorum regulus*,” like the *subreguli* or *under-cyningas* of our own History. Presently in c. 28 *Athanaric*, the successor of *Fredigern*, is pointedly called *Rex*. On all this, see *Allen*, *Royal Prerogative*, 163.

<sup>42</sup> See *Norman Conquest*, i. 75, 580.

<sup>43</sup> The best instance in English History of the process by which a kingdom changed into a province, by going through the intermediate stage of a half-independent Ealdormanship, is to be found in the history of South-Western Mercia under its Ealdorman *Æthelred* and the Lady *Æthelflæd*, in the reigns of *Ælfred* and *Eadward the Elder*. See *Norman Conquest*, i. 563.

settlement made by Cerdic and Cynric on the southern coast grew, step by step, by the incorporation of many small kingdoms and independent Ealdormanships, into the lordship of the whole Isle of Britain, into the immediate kingship of all its English inhabitants. The Ealdorman of a corner of Hampshire thus grew step by step into the King of the West-Saxons, the King of the Saxons, the King of the English, the Emperor of all Britain, the lord, in later times, of a dominion reaching into every quarter of the world<sup>44</sup>. But the point which now concerns us is that, with each step in the growth of the King's territorial dominion, his political authority within that dominion has grown also. The change from an Ealdorman to a King, the change from a heathen King to a Christian King crowned and anointed, doubtless did much to raise the power and dignity of the ruler who thus at each change surrounded himself with new titles to reverence. But this was not all. The mere increase in the extent of territorial dominion would at each step work most powerfully to increase the direct power of the King, and still more powerfully to increase the vague reverence which everywhere attaches to kingship. In Homer we read of Kings, some of whom were "more kingly," more of Kings, than others. So it was among ourselves. A King who reigned over all Wessex was more of a King than a King who reigned only over the Isle of Wight, and a King who reigned over all England was more of a King than a King who reigned only over Wessex<sup>45</sup>. The greater the territory over which a King reigns the less familiar he becomes to the mass of his people; he is more and more shrouded in a mysterious awe, he is more and more looked on as a being of a different nature from other men, of a different nature even from other civil magistrates and military leaders, however high their authority and however illustrious their personal character. Such a separation of the King from the mass of his people may indeed, in some states of things, lead, not to the increase, but to the lessening of his practical power. He may become in popular belief too great and awful for the effectual exercise of power, and, by dint of his very greatness, his practical authority may be transferred to his representatives who govern in his name. He may be surrounded with a worship almost more than earthly, while the reality of power passes to a Mayor of the Palace, or is split up among the satraps of distant provinces<sup>46</sup>. But, with a race of vigorous and politic Kings ruling over a nation whose tendencies are to closer unity and not to wider separation, each step in the territorial growth of the kingdom is also a step in the growth, not only of the formal dignity, but of the practical authority of the King. The King of the English, who in the eleventh century held the direct sovereignty of all England, the over-lordship of all Britain, was a very different person from his forefather, who in the sixth century deemed that another victory over the Briton, the acquisition of another strip of British territory, another hundred, it may be, of modern Hampshire, had made him great enough to change his title of Ealdorman for that of King. Such a King was every inch a King; his personal character was of the highest moment for the good or evil fortune of his kingdom. His will counted for much in the making of the laws by which his people were to be governed, and in the disposal of honours and offices among those who were to govern under him. But yet he was not a despot; men never forgot that the King was what his name implied, the representative, the impersonation, the offspring of the people. It was from the choice of the people that he received his authority to rule over them, a choice limited under all ordinary circumstances to

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<sup>44</sup> See Norman Conquest, i. 39, 78.

<sup>45</sup> *Iliad*, ix. 160: —καὶ μοὶ ὑποστήτω, ὅσον βασιλεύτερός εἰμι.

<sup>46</sup> The instances in which a great kingdom has been broken up into a number of small states practically independent, but owning a nominal superiority in the successor of the original Sovereign, are not few. In the case of the Empire I have found something to say about it in my *Historical Essays*, 151, and in the case of the Caliphate in my *History and Conquest of the Saracens*, 137. How the same process took place with the Mogul Empire in India is set forth by Lord Macaulay in his *Essays on Lord Clive and Warren Hastings*. But he should not have compared the great Mogul, with his nominal sovereignty, to "the most helpless driveller among the later Carolingians," a class whom Sir Francis Palgrave has rescued from undeserved contempt. But the breaking up of the Western Kingdom is none the less an example of the same law. The most remarkable thing is the way, or rather the three different ways, in which the scattered members have been brought together again in Germany, Italy, and France. This process of dismemberment, where a nominal supremacy is still kept by the original Sovereign, must be distinguished from that of falling back upon Dukes or Ealdormen after a period of kingly rule. In this latter case it would seem that no central sovereignty went on.

the royal house, but which, within that house, was not tied down by a blind regard to any particular law of succession. It was a choice which at any time could fix itself on the worthiest man of the royal house, and which, when the royal house failed to supply a fitting candidate, could boldly fix itself on the worthiest man of the whole people<sup>47</sup>. And those from whom the King first drew his power ever shared with him in its exercise. The laws, the grants, the appointments to offices, which the King made, needed the assent of the people in their national Assembly, the gathering of the Wise Men of the whole land<sup>48</sup>. And those who gave him his power and who guided him in its exercise could also, when need so called, take away the power which they had given. At rare intervals – for it is only at rare intervals that so great a step is likely to be taken – has the English nation exercised its highest power by taking away the Crown from Kings who were unworthy to wear it. I speak not of acts of violence or murder, or of processes which, though clothed under legal form, were without precedent in our history. I speak not of the secret death of Henry the Sixth or of the open execution of Charles the First. I speak of the regular process of the Law. In Northumberland the right of deposition was exercised with special frequency<sup>49</sup>. But I will speak only of that direct and unbroken line of Kings who from Kings of the West-Saxons grew into the Kings of the English. Six times at least, in the space of nine hundred years, from Sigeberht of Wessex to James the Second, has the Great Council of the Nation thus put forth the last and greatest of its powers<sup>50</sup>. The last exercise of this power has made its future exercise needless. All that in old times was to be gained by the deposition of a King can now be gained by a vote of censure on a Minister, or, in the extremest case, by his impeachment.

But, besides that growth of the King's power which followed naturally on the growth of the King's dominions, another cause was busily at work which clothed him with a personal influence which was of almost greater moment than his political authority. To a large portion of his subjects, to all the men of special wealth or power, the King gradually became, not only King but *lord*; his subjects gradually became, not only his subjects but his *men*. These names may need some explanation, and I will again go back to Tacitus as our starting-point. Side by side with the political community, the King, the nobles, the popular Assembly, all of them strictly political powers, he describes another institution, a relation in itself not political but purely personal, but which gradually became of the highest political moment. This was the institution of the *comitatus*, the system of personal relation between a man and his lord, a relation of faithful service on one side, of faithful protection on the other. Let us again hear the words of the great Roman interpreter of our own earliest days<sup>51</sup>.

<sup>47</sup> At this time of day I suppose it is hardly necessary to prove the elective character of Old-English kingship. I have said what I have to say about it in Norman Conquest, i. 106, 596. But I may quote one most remarkable passage from the report made in 787 to Pope Hadrian the First by George and Theophylact, his Legates in England (Haddan and Stubbs, Councils and Ecclesiastical Documents, iii. 453). "Sanximus ut in ordinatione Regum nullus permittat pravorum praevalere assensum: sed legitime Reges a sacerdotibus et senioribus populi eligantur." One would like to know who the "pravi" here denounced were. The passage sounds very like a narrowing of the franchise or some other interference with freedom of election, but in any case it bears witness to the elective character of our ancient kingship, and to the general popular character of the constitution.

<sup>48</sup> I have described the powers of the Witan, as I understand them and as they were understood by Mr. Kemble, at vol. i. p. 108 of the History of the Norman Conquest and in some of the Appendices to that volume. With regard to the powers of the Witan, I find no difference between my own views and those of Professor Stubbs in the Introductory Sketch to his Select Charters (p. 11), where the relations between the King and the Witan, and the general character of our ancient constitution, are set forth with wonderful power and clearness. But I find Mr. Stubbs and myself differing altogether as to the constitution of the Witenagemót. I look upon it as an Assembly of the whole kingdom, after the type of the smaller assemblies of the shire and other lesser divisions. Mr. Stubbs fully admits the popular character of the smaller assemblies, but denies any such character to the national gathering. It is dangerous to set oneself up against the greatest master of English constitutional history, but I must ask the reader to weigh what I say in note Q in the Appendix to my first volume.

<sup>49</sup> I have collected some of the instances of deposition in Northumberland in the note following that on the constitution of the Witenagemót. (Norman Conquest, i. 593.) It is not at all unlikely that the report of George and Theophylact quoted above may have a special reference to the frequent changes among the Northumbrian Kings.

<sup>50</sup> I have mentioned all the instances at vol. i. p. 105 of the Norman Conquest: Sigeberht, Æthelred, Harthacnut, Edward the Second, Richard the Second, James the Second. It is remarkable that nearly all are the second of their respective names; for, besides Æthelred, Edward, Richard, and James, Harthacnut might fairly be called Cnut the Second.

<sup>51</sup> Tacitus, De Moribus Germaniæ, 13, 14: – "Nec rubor inter comites adspici. Gradus quinetiam et ipse comitatus habet, iudicio

“It is no shame among the Germans to be seen among the companions (*comites*) of a chief. And there are degrees of rank in the companionship (*comitatus*), according to the favour of him whom they follow; and great is the rivalry among the companions which shall stand highest in the favour of his chief, and also among the chiefs which shall have the most and the most valiant companions... When they come to battle, it is shameful for the chief to be surpassed in valour; it is shameful for his companions not to equal the valour of their chief. It is even a badge of disgrace for the remainder of life if a man comes away alive from the field on which his chief has fallen. To guard, to defend him, to assign their own valiant deeds to his credit, is their first religious duty. The chiefs fight for victory; the companions fight for their chief.”

This is the description given by a Roman historian of the second century; let me set beside it the words of an English poet of the tenth. He is describing the battle of Maldon in 991, which was fought by the East-Saxons under their Ealdorman Brihtnoth against the invading Northmen. The Ealdorman has been killed; two of his followers have fled, one of them on the Ealdorman’s horse, and every word that is put into the mouth of his faithful companions turns upon the personal tie between them and their lord<sup>52</sup>.

“Thereon hewed him  
The heathen soldiers;  
And both the warriors  
That near him by-stood,  
Ælfnoth and Wulfmær both,  
Lay there on the ground  
By their lord;  
Their lives they sold.  
There bowed they from the fight  
That there to be would not;  
There were Odda’s bairns  
Erst in flight;  
Godric from battle went,  
And the good man forsook  
That to him oft times Horses had given.  
He leapt on the horse  
That his lord had owned,  
On the housings  
That it not right was.”

Presently we read of the deeds done by his Thegns over his body;

“There was fallen  
The folk’s Elder,

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ejus quem sectantur; magnaue et comitum æmulatio quibus primus apud Principem suum locus; et Principum cui plurimi et acerrimi comites... Quum ventum in aciem, turpe Principi virtute vinci, turpe comitatui virtutem Principis non adæquare. Jam vero infame in omnem vitam ac probrosum, superstitem Principi suo ex acie recessisse. Illum defendere, tueri, sua quoque fortia facta gloriæ ejus adsignare, præcipuum sacramentum est. Principes pro victoria pugnant; comites pro Principe.” See Allen, *Royal Prerogative*, 142.

<sup>52</sup> The original text of the Song of Maldon will be found in Thorpe’s *Analecta Anglo-Saxonica*. My extracts are made from the modern English version which I attempted in my *Old-English History*, p. 192. I went on the principle of altering the Old-English text no more than was actually necessary to make it intelligible. When a word has altogether dropped out of our modern language, I have of course changed it; when a word is still in use, in however different a sense, I have kept it. Many words which were anciently used in a physical sense are now used only metaphorically; thus “cringe” is used in one of the extracts in its primary meaning of bowing or falling down, and therefore of dying.

Æthelred's Earl;  
All there saw  
Of his hearth's comrades  
That their lord lay dead.  
Then there went forth  
The proud Thanes,  
The undaunted men  
Hastened gladly;  
They would there all  
One of two things,  
Either life forsake,  
Or the loved one wreak."

Then one of the Thegns speaks;

"Neither on that folk  
Shall the Thanes twit me  
That I from this host  
Away would go  
To seek my home,  
Now mine Elder lieth  
Hewn down in battle;  
To me is that harm most;  
He was both my kinsman  
And my lord."

Then another speaks in answer;

"How thou, Ælfwine, hast  
All our Thanes  
In need-time cheered.  
Now our lord lieth,  
The Earl on the earth,  
That of us each one  
Others should embolden,  
Warmen to the war,  
That while we weapons may  
Have and hold,  
The hard falchion,  
Spear and good sword."

Then another speaks;

"I this promise  
That I hence nill  
Flee a footstep,  
But will further go,  
To wreak in the fight  
My lord and comrade.

Nor by Stourmere  
Any steadfast hero  
With words need twit me  
That I lordless  
Homeward should go,  
And wend from the fight.

The story goes on a little later;

“Rath was in battle  
Offa hewn down,  
Yet had he furthered  
That his lord had pledged,  
As he ere agreed  
With his ring-giver  
That they should both  
To the borough ride  
Hale to home,  
Or in the host cringe  
On the slaughter place,  
Of their wounds die.  
He lay thane-like  
His lord hard by.”

Lastly another Thegn speaks;

“Mind shall the harder be,  
Heart shall the keener be,  
Mood shall the more be,  
As our main lessens.  
Here lies our Elder,  
All down hewn,  
A good man in the dust;  
Ever may he groan  
Who now from this war-play  
Of wending thinketh.  
I am old of life;  
Hence stir will I not,  
And I by the half  
Of my lord,  
By such a loved man  
To lie am thinking.”

This institution of military companionship seems to have struck Tacitus with some amazement. He says that this kind of personal relation was among the Germans not thought shameful. This was the natural feeling of a Roman. The duty of a Roman citizen was wholly towards the state. The state might be represented either by a responsible magistrate or by an irresponsible Emperor; in either case obedience was due to the representative of the state; but there was no personal relation to the man. The old Roman institution of patron and client, which was so like the German *comitatus*, had

pretty well died out by the time of Tacitus, and it had at no time been entered into by men of high rank<sup>53</sup>. What amazed Tacitus was that among the Germans the noblest in birth and exploits were not looked on as dishonoured by entering the service of a personal lord. To Tacitus himself Trajan was the chief magistrate of the Roman commonwealth, the chief commander of the Roman army; he was a personal master to none but his slaves and freedmen<sup>54</sup>. It was only in a much later stage of the Roman Empire that personal service in the court and household of the Emperor began to be looked on as honourable<sup>55</sup>. But among the Teutonic nations the personal relation coloured everything; personal service towards a King or other chief was honourable from the beginning; the proudest nobles of Europe have down to this day thought themselves honoured by filling offices about the persons of Emperors, Kings, and other princes which Tacitus would have deemed beneath the dignity of any Roman citizen. We are now accustomed to see this kind of service paid in the case of royal personages only; a few centuries back men of any rank deemed themselves honoured by paying the like service to men of the rank next above their own, or even to men of their own rank who had the start of them in age and reputation. The knight was served by his esquire and the master by his scholar; and the same principle, laid aside everywhere else, lingers on in what is undoubtedly a trace of the Teutonic *comitatus*, the fagging of our public schools. Now the political effect of the existence of the principle of personal service, the institution of the *comitatus*, alongside of the primitive political community, was most important in our early history. The personal relation went far to swallow up the purely political one. To enter the service of a chief became so established a practice that at last it was deemed that it was the part of every man to “seek a lord,” as the phrase was, to commend himself, to put himself under the protection of some man more powerful than himself<sup>56</sup>. The *man* owed faithful service to his *lord*; the lord owed faithful protection to his man. The very word *Lord*, in its older and fuller form *Hlaford*, implies the rewards which the lord bestowed on his faithful man. The word is in some sort a puzzling one; but there can be no doubt that it is connected with *hlaf*, *loaf*, and that its general meaning is *the giver of bread*<sup>57</sup>. Now herein lurks something which has greatly affected all later political and social arrangements. The institution of the *comitatus* in its first state had nothing whatever to do with the holding of land. But the *man* looked for reward of his faithful service at the hands of his *lord*; he looked for the bread of which his lord’s title proclaimed him as the giver. There was of course no form of reward, no form of *bread*, so convenient or so honourable as that of a grant of land to be held as the reward of past and the condition of future service. Moreover the custom of granting out lands to be held by the tenure of military service had become common in the later days

<sup>53</sup> The history of the Roman clientship is another of those points on which legend and history and ingenious modern speculation all come to much the same, as far as our present purpose is concerned. Whether the clients were the same as the *plebs* or not, at any rate no patricians entered into the client relation, and this at once supplies the contrast with Teutonic institutions.

<sup>54</sup> The title of *dominus*, implying a master of slaves, was always refused by the early Emperors. This is recorded of Augustus by Suetonius (Aug. 53) and Dion (lv. 12), and still more distinctly of Tiberius (Suetonius, Tib. 27; Dion, lvii. 8). Tiberius also refused the title of *Imperator*, except in its strictly military sense: οὔτε γὰρ δεσπότην ἑαυτὸν τοῖς ἐλευθέροις οὔτε αὐτοκράτορα πλὴν τοῖς στρατιώταις καλεῖν ἐφίλει. Caius is said (Aurelius Victor, Cæs. xxxix. 4) to have been called *dominus*, and there is no doubt about Domitian (Suetonius, Dom. 13; Dion, lxxvii. 13, where see Reimar’s Note). Pliny in his letters constantly addresses Trajan as *dominus*; yet in his Panegyric(45) he draws the marked distinction: “Scis, ut sunt diversa natura dominatio et principatus, ita non aliis esse principem gratiorem quam qui maxime dominum graventur.” This marks the return to older feelings and customs under Trajan. The final and formal establishment of the title seems to have come in with the introduction of Eastern ceremonies under Diocletian (see the passage already referred to in Aurelius Victor). It is freely used by the later Panegyrist, as for instance Eumenius, iv. 21, v. 13: “Domine Constanti,” “Domine Maximiane, Imperator æterne,” and so forth.

<sup>55</sup> Vitellius (Tac. Hist. i. 58) was the first to employ Roman knights in offices hitherto always filled by freedmen; but the system was not fully established till the time of Hadrian (Spartianus, Hadrian, 22).

<sup>56</sup> See Norman Conquest, i. 89, 587, and the passages here quoted.

<sup>57</sup> Both *hlaford* and *hlæfdige* (*Lord* and *Lady*) are very puzzling words as to the origin of their later syllables. It is enough for my purpose if the connexion of the first syllable with *hlaf* be allowed. Different as is the origin of the two words, *hlaford* always translates *dominus*. The French *seigneur*, and the corresponding forms in Italian and Spanish, come from the Latin *senior*, used as equivalent to *dominus*. This is one of the large class of words which are analogous to our *Ealdorman*.

of Roman power<sup>58</sup>. Such lands were of course held, not of the Emperor as a personal lord, but of the Roman Commonwealth of which he was the head and representative. But the custom of holding lands by military service fell in well with the Teutonic institution of personal service, and the union of the two in the same person produced that feudal relation which has had such an important bearing on all political and social life through the whole of the middle ages and down to our own time. The land granted by the lord to his man, or the land which the man agreed to hold as if it had been so granted, might be a kingdom held of the Emperor or the Pope, or it might be the smallest estate held of a more powerful neighbour. In either case, such a holding by military service was a *fief*, and from the institution of such fiefs the so-called Feudal System, with all its manifold workings for good and for evil, had its rise. But so far as the Feudal System existed, either in England or in any other country, it existed wholly as a system which had grown up by the side of an earlier system which it wholly or partially displaced. The feudal tenant, holding his land of a lord by military service gradually supplanted, wholly or partially, in most countries of Europe, the *allodial* holder who held his land of no other man, and who knew no superior but God and the Law<sup>59</sup>. In England this change took place only gradually and partially; it was through the Norman Conquest, or, more accurately, through the subtle legal theories which came in with the Norman Conquest, that it was finally established. And, after all, it was rather in theory than in fact that it was established. The Feudal System, as something spreading into every corner of the land, and affecting every relation of life, never obtained the same complete establishment in England which it did in some continental countries.

But it is only indirectly that my subject has anything to do with the Feudal System, and especially with its social working. I have to do with the *comitatus*, out of which the feudal relation grew, mainly in another aspect equally indirect, namely, the way in which it affected our earliest political institutions. It gave us a new form of nobility, a nobility of office and of personal relation to the King, instead of a nobility founded on birth only. It gave us a nobility of *Thegns*, which gradually supplanted the earlier nobility of the *Eorls*. As the royal power and dignity grew, it came to be looked on as the highest honour to enter into the personal service of the King. Two results followed; service towards the King, a place, that is, in the King's *comitatus*, became the badge and standard of nobility<sup>60</sup>. And it greatly strengthened the power of the King that he stood to all the chief men of his kingdom in the relation, not only of a political ruler, but of a personal lord, a lord to whose service they were bound by a personal tie, and of whom they held their lands as the gift of his personal bounty. It marks perhaps a decline from the first idea of the *comitatus* that the old word *Gesith*, *companion*, answering exactly to the Latin *Comes* used by Tacitus, was supplanted by the name *Thegn*, literally *servant*<sup>61</sup>. But when personal service was deemed honourable, the name of servant was no degradation, and the name *Thegn* became equivalent to the older *Eorl*. The King's *Thegn*, the men who held their land of the King and who were bound to him by the tie of personal service, formed the highest class of nobility. The *Thegns* of inferior lords, of Bishops and Ealdormen, formed a secondary class. A nobility of this kind, there can be no doubt, was so far more liberal than the elder nobility of birth that admission to it was not forbidden to men of lower degree. The *Ceorl*, the ordinary freeman, could not in strictness become an *Eorl*, for the simple reason that he could not change his forefathers; but he might, and he often did, become a *Thegn*<sup>62</sup>. But, on the other hand, such a nobility, while it made it easier for the common freeman to rise, tended to lower the condition of the common freemen who did not rise. For the very reason that the barrier of birth is one which cannot be passed, it is in some respects less irksome than the barrier of wealth or office. The privileges of a strictly hereditary nobility are much

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<sup>58</sup> This is fully treated by Palgrave, *English Commonwealth*, i. 350, 495, 505.

<sup>59</sup> On the change from the *alod*, *odal*, or *eðel*, a man's very own property, to the land held of a lord, see Hallam, *Middle Ages*, i. 113.

<sup>60</sup> See *Norman Conquest*, i. 85-88. I have there chiefly followed Mr. Kemble in his chapter on the Noble by Service, Saxons in England, i. 162.

<sup>61</sup> See the whole history and meaning of the word in the article *þegen* in Schmid's *Glossary*.

<sup>62</sup> See *Norman Conquest*, i. 89.

more likely to sink into mere honorary distinctions than the privileges of a nobility whose rank is backed by the solid advantages of office and of a personal relation to the sovereign.

The tendency then of the first six hundred years after the settlement of the English in Britain was to increase the power of the Crown, to depress the lower class of freemen, to exchange a nobility of birth for a nobility of personal service to the King. That is to say, England had, before the Norman Conquest, already begun to walk, though with less speed than most other nations, in the path which led to the general overthrow of liberty throughout Europe. The foreign invasion which for a moment seemed to have crushed her freedom for ever did in truth only lead to its new birth, to its fresh establishment in forms better fitted to the altered state of things, forms better fitted to be handed on to later times, forms better fitted to preserve the well-being of a great nation, than those forms of the old Teutonic community which still linger on in those remote corners of the world which I spoke of at my beginning. That momentary overthrow, that lasting new birth, will be the subject of my second chapter. I will now only call you to bear in mind that England has never been left at any time without a National Assembly of some kind or other. Be it Witenagemót, Great Council, or Parliament, there has always been some body of men claiming, with more or less of right, to speak in the name of the nation. And bear too in mind that, down to the Norman Conquest, the body which claimed to speak in the name of the nation was, in legal theory at least, the nation itself. This is a point on which I mean again to speak more fully; I would now simply suggest the thought, new perhaps to many, that there was a time when every freeman of England, no less than every freeman of Uri, could claim a direct voice in the councils of his country. There was a time when every freeman of England could raise his voice or clash his weapon in the Assembly which chose Bishops and Ealdormen and Kings, when he could boast that the laws which he obeyed were laws of his own making, and that the men who bore rule over him were rulers of his own choosing. Those days are gone, nor need we seek to call them back. The struggles of ages on the field and in the Senate have again won back for us the selfsame rights in forms better suited to our times than the barbaric freedom of our fathers. Yet it is well that we should look back to the source whence comes all that we boast of as our own possession, all that we have handed on to our daughter commonwealths in other continents. Let us praise famous men and our fathers that begat us. Let us look to the rock whence we were hewn and to the hole of the pit whence we were digged. Freedom, the old poet says, is a noble thing<sup>63</sup>; it is also an ancient thing. And those who love it now in its more modern garb need never shrink from tracing back its earlier forms to the first days when history has aught to tell us of the oldest life of our fathers and our brethren.

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<sup>63</sup> Barbour, Bruce, i. 224: "A! fredome is A noble thing." So said Herodotus (v. 78) long before: ἡ ἰσηγορίη ὡς ἔστι χρῆμα σπουδαῖον.

## CHAPTER II

In my first chapter I dealt mainly with those political institutions of the earliest times – institutions common to our whole race, institutions which still live on untouched among some small primitive communities of our race – out of which the still living Constitution of England grew. It is now my business, as the second part of my subject, to trace the steps by which that Constitution grew out of a political state with which at first sight it seems to have so little in common. My chief point is that it did thus, in the strictest sense, grow out of that state. Our English Constitution was never made, in the sense in which the Constitutions of many other countries have been made. There never was any moment when Englishmen drew out their political system in the shape of a formal document, whether as the carrying out of any abstract political theories or as the imitation of the past or present system of any other nation. There are indeed certain great political documents, each of which forms a landmark in our political history. There is the Great Charter, the Petition of Right, the Bill of Rights. But not one of these gave itself out as the enactment of anything new. All claimed to set forth, with new strength, it might be, and with new clearness, those rights of Englishmen which were already old. In all our great political struggles the voice of Englishmen has never called for the assertion of new principles, for the enactment of new laws; the cry has always been for the better observance of the laws which were already in force, for the redress of grievances which had arisen from their corruption or neglect<sup>64</sup>. Till the Great Charter was wrung from John, men called for the laws of good King Eadward. And when the tyrant had unwillingly set his seal to the groundwork of all our later Law, men called for the stricter observance of a Charter which was deemed to be itself only the laws of Eadward in a newer dress<sup>65</sup>. We have made changes from time to time; but they have been changes which have been at once conservative and progressive – conservative because progressive, progressive because conservative. They have been the application of ancient principles to new circumstances; they have been the careful repairs of an old building, not the pulling down of an old building and the rearing up of a new. The life and soul of English law has ever been precedent; we have always held that whatever our fathers once did their sons have a right to do again. When the Estates of the Realm declared the throne of James the Second to be vacant, they did not seek to justify the act by any theories of the right of resistance, or by any doctrines of the rights of man. It was enough that, three hundred years before, the Estates of the Realm had declared the throne of Richard the Second to be vacant<sup>66</sup>. By thus walking in the old paths, by thus hearkening to the wisdom of our forefathers,

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<sup>64</sup> In the great poetical manifesto of the patriotic party in Henry the Third's reign, printed in Wright's *Political Songs of England* (Camden Society, 1839), there seems to be no demand whatever for new laws, but only for the declaration and observance of the old. Thus, the passage which I have chosen for one of my mottoes runs on thus: —“*Igitur communitas regni consulatur; Et quid universitas sentiat sciatur, Cui leges propriae maxime sunt notae. Nec cuncti provinciae sic sunt idiotae, Quin sciant plus caeteris regni sui mores, Quos relinquunt posteris hii qui sunt priores. Qui reguntur legibus magis ipsas sciunt; Quorum sunt in usibus plus periti fiunt; Et quia res agitur sua, plus curabunt, Et quo pax acquiritur sibi procurabunt.*”

<sup>65</sup> On the renewal of the Laws of Eadward by William, see *Norman Conquest*, iv. 324. Stubbs, *Documents*, 25. It should be marked that the Laws of Eadward were again confirmed by Henry the First (see Stubbs, 90-99), and, as the Great Charter grew out of the Charter of Henry the First produced by Archbishop Stephen Langton in 1213, the descent of the Charter from the Laws of Eadward is very simple. See Roger of Wendover, iii. 263 (ed. Coxe). The Primate there distinctly says that he had made John swear to renew the Laws of Eadward. “*Audistis quomodo, tempore quo apud Wintoniam Regem absolvi, ipsum jurare compulerim, quod leges iniquas destrueret et leges bonas, videlicet leges Eadwardi, revocaret et in regno faceret ab omnibus observari.*” It must be remembered that the phrase of the Laws of Eadward or of any other King does not really mean a code of laws of that King's drawing up, but simply the way of administering the Law, and the general political condition, which existed in that King's reign. This is all that would be meant by the renewal of the Laws of Eadward in William's time. It simply meant that William was to rule as his English predecessors had ruled before him. But, by the time of John, men had no doubt begun to look on the now canonized Eadward as a lawgiver, and to fancy that there was an actual code of laws of his to be put in force. On the various confirmations of the Great Charter, see Hallam, *Middle Ages*, ii. 111.

<sup>66</sup> Macaulay, ii. 660. “When they were told that there was no precedent for declaring the throne vacant, they produced from among the records of the Tower a roll of parchment, near three hundred years old, on which, in quaint characters and barbarous Latin, it was

we have been able to change whenever change has been needed, and we have been kept back from changing out of the mere love of abstract theory. We have thus been able to advance, if somewhat slowly, yet the more surely; and when we have made a false step, we have been able to retrace it. On this last power, the power of undoing whatever has been done amiss, I wish specially to insist. In tracing the steps by which our Constitution has grown into its present shape, I shall try specially to show in how many cases the best acts of modern legislation have been, wittingly or unwittingly, a falling back on the principles of our earliest times. In my first chapter I tried to show how our fathers brought with them into the Isle of Britain those primæval institutions which were common to them with the whole Teutonic race. I tried to show how those institutions were modified in the course of time by the circumstances of the English Conquest of Britain, and by the events which followed that Conquest. I showed how the kingly power grew with every increase of the territorial extent of the kingdom; how the old nobility of birth gave way to a new nobility of personal relation to the sovereign; and how the effect of these changes seems to have been to make it easier for the individual freeman of the lower rank to rise, but at the same time to lower the position of the ordinary freemen as a class. This last change was still more largely brought about as an independent result of the same changes which tended to increase the kingly power. In a state of things where representation is unknown, where every freeman is an elector and a lawgiver, but where, if he exercises his elective and legislative rights, he must exercise them directly in his own person – in such a state of things as this every increase of the national territory makes those rights of less practical value, and causes the actual powers of government to be shut up in the hands of a smaller body. There is no doubt that in the earliest Teutonic assemblies every freeman had his place. There is no doubt that in England every freeman kept his place in the smaller local assemblies of the *mark*

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recorded that the Estates of the Realm had declared vacant the throne of a perfidious and tyrannical Plantagenet.” See more at large in the debate of the Conference between the Houses, ii. 645.

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